Supreme Court, U.S.
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In The

Supreme Court of the United States

ERNESTO FRANCISCO,

Petitioner,

vs.

M/T STOLT ACHIEVEMENT, STOLT ACHIEVEMENT, INC., STOLT-NEILSEN TRANSPORTATION GROUP, LTD.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Fifth Circuit erred by refusing to follow this Court's binding decisions of *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 121 S.Ct. 1302, 149 L.Ed.2d 234 (2001), *Boyd v. Grand Trunk Western R. Co.*, 338 U.S. 263, 70 S.Ct. 26, 94 L.Ed. 55 (1949), *Atchison, Topeka and Santa Fe Railway Company v. Buell*, 480 U.S. 557, 107 S.Ct. 1410, 94 L.Ed.2d 563 (1987), and *U.S. Bulk Carriers v. Arguelles*, 400 U.S. 351, 27 L.Ed.2d 456, 91 S.Ct. 409 (1971) by forcing a Jones Act seaman to arbitrate a valid claim for personal injuries sustained within the State of Louisiana and refusing the seaman's specific demand for judicial relief?

II. Whether the United States Court of Appeals for the Fifth Circuit erred by specifically ignoring the mandates of 28 U.S.C. §1333, commonly known as the Savings to Suitors Statute, and 28 U.S.C. §1445, by sanctioning the removal of a properly venued State Court Jones Act suit and refusing to order the district court to remand for lack of federal question subject matter jurisdiction?

III. Whether the United States Court of Appeals for the Fifth Circuit erred by refusing to apply the "seaman" exclusion found in Title 9 U.S.C. §1 to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §201, for the first time in the 30 year history of that statute and in direct contravention of unequivocal Congressional mandate, violating the basic rules of statutory construction and ignoring all legislative history of the enabling legislation of the Convention?

LIST OF PARTIES

The parties to the action are:

Ernesto Francisco;

M/T Stolt Achievement;

M/T Stolt Achievement, Inc.; and

Stolt-Nielsen Transportation Group, Ltd.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Ernesto Francisco, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit entered on June 4, 2002, rehearing and rehearing en banc denied July 3, 2002.

OPINIONS BELOW

All opinions below are contained in the appendices to this Petition. The Judgment and Opinion of March 23, 2001 of the United States District Court, Eastern District of Louisiana, is reproduced in the Appendix, A-19 and is also reported at 2001 W.L. 290172 (E.D. La. Mar. 23, 2001) (No. Civ. A.00-3532). The opinion of the United States Court of Appeals for the Fifth Circuit affirming the district court is contained in the Appendix, A-1 and is also reported at 293 F.3d 270 (La. App. 5th Cir. June 4, 2002) (No. 01-30694), rehearing and rehearing en banc denied on July 3, 2002, Appendix A-31.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Fifth Circuit affirming the district court was entered on June 4, 2002 (Appendix A-1) and rehearing and rehearing en banc were denied on July 3, 2002. (Appendix A-31) The jurisdiction of this Court is invoked under 28 U.S.C. §1254.

CONSTITUTIONS, STATUTES AND REGULATIONS INVOLVED IN THE CASE

9 U.S.C. §1 (Appendix A-33); 9 U.S.C. §201 (Appendix A-34); 9 U.S.C. §208 (Appendix A-44); 28 U.S.C. §1333 (Appendix A-45); 28 U.S.C. §1445(a) (Appendix A-46); 45 U.S.C. §51 (Appendix A-47); 45 U.S.C. §56 (Appendix A-49); 45 U.S.C. §59 (Appendix A-50); 45 U.S.C. §151 (Appendix A-51); 46 App. U.S.C. §688 (Appendix A-54); 46 U.S.C. §10313(i) (Appendix A-56).

STATEMENT OF CASE

Petitioner, Ernesto Francisco, was employed aboard the M/T Stolt Achievement, a chemical tanker ship, and was injured while the vessel was in the Mississippi River within Louisiana headed for the Port of New Orleans. Petitioner filed suit against his employers in state court under the "savings to suitors clause," 28 U.S.C. §1333, seeking damages under the Jones Act, 46 U.S.C. App. §688. Thereafter, on November 29, 2000, defendants M/T Stolt Achievement, M/T Stolt Achievement, Inc. and Stolt-Nielsen Transportation Group, Ltd., removed the case to the United States District Court, Eastern District of Louisiana, alleging federal question jurisdiction and seeking to compel arbitration, pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §201. Petitioner, Ernesto Francisco, filed a motion to remand to state court and the defendants filed a motion to compel arbitration. The United States District for the Eastern District of Louisiana, on March 23, 2000, declined to remand the case to state court and granted defendants' motion compelling arbitration. (Appendix A-19) The United States Court of Appeals for the Fifth Circuit

affirmed on June 4, 2002 and rehearing and rehearing en banc were denied on July 3, 2002. (Appendix A-31)

ARGUMENT

I. INTRODUCTION

Seamen are wards of this Honorable Court and have been consistently and vigilantly protected since 1790[1]. In 1823, writing for this Court, Justice Story issued the following commentary with respect to the federal court's wardship theory:

> They are emphatically the wards of the admiralty; and though not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and *cestuis que* trust with their trustees. . . . If there is any undue inequality in the terms, any disproportion in the bargain, any sacrifice of rights on one side, which are not compensated by extraordinary benefits on the other, the judicial interpretation of the transaction is, that the bargain is unjust and unreasonable, that advantage has been taken of the situation of the weaker party, and that pro tanto the bargain ought to be set aside as inequitable. . . . And on every occasion the court expects to be satisfied that the compensation for every material alteration is entirely

[1] See, *U.S. Bulk Carriers v. Arguelles*, 400 U.S. 351, 356, 27 L.Ed.2d 456, 91 S.Ct. 409 (1971).

> adequate to the diminution of right or privilege on the part of the seamen. *Harden v. Gordon* (CC), 2 Mason 541, Fed. Cas. No. 6047 (1823); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 246-247, 63 S.Ct. at 251, 87 L.Ed. 239 (1942).

This Honorable Court has also consistently held that the maritime law is to be liberally construed to carry out its full purpose, which is to enlarge admiralty's protection to its wards. *Warner v. Goltra,* 293 U.S. 155, 55 S.Ct. 46, 79 L.Ed. 254 (1934), *The Arizona v. Anelich*, 298 U.S. 110, 56 S.Ct. 707, 80 L.Ed. 1075 (1936). This is especially true with respect to protecting rights of these wards in their relations with their employers. *Castillo v. Spiliada Maritime Corp.*, 937 F.2d 240, 247 (5th Cir. 1991) (We are convinced that federal courts must remain vigilant in protecting the rights of seaman, whether foreign or domestic, in their relations with their employer.)

Petitioner, a ward of this Court, properly brought a Jones Act suit in state court for personal injuries pursuant to the "savings to suitors clause," 28 U.S.C. §1333.[2] This clause has been consistently interpreted by this Court as allowing the petitioner to bring suit in state court or any other court of general common law or jurisdiction. *Engel v. Davenport*, 271 U.S. 33, 46 S.Ct. 410, 70 L.Ed. 813 (1926);

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[2] The savings to suitors clause provides in pertinent part:

"Sec. 1333. Admiralty, maritime and prize cases – The district courts shall have original jurisdiction, exclusive of the courts of the United States, of:

> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

Garrett, supra, 317 U.S. 239 (1942). Petitioner's substantive claim was brought pursuant to 46 U.S.C. App. §688, *et seq.*, the "Jones Act" which specifically and mandatorily provides that the "Jurisdiction in such actions **shall be under the Court** . . . " (emphasis provided) and the Jones Act further incorporates " . . . all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees . . . "[3]. The entirety of 45 U.S.C. §51, *et seq.*, the Federal Employee Liability Act (FELA), is thus incorporated into the Jones Act and the express provisions of FELA specifically provide that the Petitioner's claim may be brought in either the courts of the United States or "the courts of the several states."[4] Removal of a Jones Act or FELA case from state court to federal court is again specifically statutorily prohibited pursuant to 28 U.S.C. §1445(a).[5] ("Actions brought under the Jones Act in state court may not be removed to federal court") 1B *Benedict on Admiralty* §3, pg. 1-20 (7th ed. 1991), citing 28 U.S.C. §1445(a). See also, *Cook v. Alaska S.S. Co.*, 8 F.2d 207 (D.C.Wash.1925) (The prohibition against removal contained in the Federal Employers' Liability Act, §51 *et seq.* of Title 45, was extended to actions for personal injuries under the Jones Act, §688 of Title 46, and therefore such an action was not removable.) See also, *Anderson v. American & Cuban S.S.*

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[3] 46 U.S.C. §688.

[4] 45 U.S.C. §56.

[5] 28 U.S.C. §1445(a) provides:

"A civil action in any State court against a railroad or its receivers or trustees, arising under sections 1-4 and 5-10 of the Act of April 22, 1908 (45 U.S.C. 51-54, 55-60), may not be removed to any district court of the United States."

Co., 41 F.2d 950 (D.C. Md.1930); *Petterson v. Standard Oil Co. of New Jersey*, 41 F.2d 219 (D.C.N.Y.1930).

Prior to the instant decision for which writs are sought, it was well settled that a seaman's state court suit was non-removable to federal court as a matter of law. Contrary to the settled jurisprudence of this Court and the statutory scheme provided by Congress, the lower courts herein accepted the illogical and erroneous argument that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §201, et seq., provides federal question removal jurisdiction to district courts over seamen claims such that the aforementioned judicial protections are destroyed in lieu of arbitration proceedings. As will be detailed below, this outcome was not intended nor legislatively provided for when the Convention on the Recognition and Enforcement of Foreign Arbitral Awards was enacted by Congress or signed into law by the President.

Because this case is one of first impression dealing with the interplay of federal statutory law and an International Convention codified in the FAA, in addition to presenting important national policy considerations, a brief history of the enactment of the Convention will be provided.

In 1970, when Congress passed the enabling legislation incorporating the Convention into United States law, it did so not by enacting a new Title to the United States Code, but instead it merely created a new chapter within Title 9. Prior to the codification of the Convention, Title 9 was not separated into chapters but was instead entitled "**Arbitration**" and the provisions therein contained what is currently Chapter 1. Important to the analysis of this

case, when adding Chapter 2, the Convention, Congress specifically chose to name what is now Chapter 1 of Title 9, "**General Provisions**." The naming of Chapter 1 "**General Provisions**" provides Congressional intent that the terms found in Chapter 1 would apply to the entirety of Title 9, unless specifically excluded therefrom. In addition, when enacting the Convention, Congress chose not to change the title of 9 U.S.C. §1 which reads, "**'Maritime transactions' and 'commerce' defined; *exceptions to operation of title***". 9 U.S.C. §1 provides

> "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, **but nothing herein contained shall apply to *contracts of employment of seamen*, railroad employees, or any other class of workers engaged in foreign or interstate commerce.** [Emphasis added].

The Convention itself was drafted in New York and limits itself to two aspects of **commercial arbitration**, (1) the enforcement of those arbitration agreements come within its purview and (2) the enforcement of foreign arbitral awards. *The New York Arbitration Convention of 1958, Towards a Uniform Judicial Interpretation*, Albert

Jan van den Berg, pg. 10 [1981]. The Convention itself does not define commercial relationships, as the drafters envisioned signatory nations applying their own domestic arbitration law exceptions to the application of the Convention.[6] This fact was memorialized in the text of Article I(3) of the Convention which provides:

> When signing, ratifying or acceding to this Convention, . . . any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as ***commercial*** under the national law of the State making such declaration. [Emphasis added].

The United States took advantage of Article I(3)'s provisions and ratified the Convention with the explicit Declaration that "[t]he United States of America will apply the Convention **only** to differences arising out of legal relationships, whether contractual or not, **which are considered as *commercial* under the national law of the United States.**" [Emphasis added].[7]

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[6] *The New York Arbitration Convention of 1958, Towards a Uniform Judicial Interpretation*, Albert Jan van den Berg, pg. 51-52 [1981]. **In the Convention Treatise, Professor van den Berg actually utilizes the U.S. seaman's employment contract exception as an example of a domestic "commercial" reservation.**

[7] See, Text of Convention, as well as Declaration at footnote 29, set forth in the annotations, 9 U.S.C.A. §201; See also, 114 Congressional Record 29605 (1968) [R. Vol. 1, at 152].

"The commercial matters reservation was included in the Convention to remove a barrier to accession by nations having separate civil and commercial codes which allow arbitration only of matters falling within the latter."[8] Other signatory countries, like the United States, exclude certain labor matters from "commercial" arbitration.[9]

Because the United States took advantage of the "commercial" exception of Article I(3) and the Convention does not define the term "commercial," the United States applied the National Law definition of Commerce found in what was then Title 9.

Supporting evidence of this fact is testimony given during the hearing held before the Senate Committee on Foreign Relations on February 9, 1970, prior to the passage of the Convention's enabling legislation, by Ambassador Richard M. Kearney, Chairman of the State Department's Advisory Committee on the enabling legislation of the Convention. Ambassador Kearney explained to Congress that Section 202 of the Convention Act defined commercial relationships that were subject to the Convention in terms **much too broadly** to be acceptable to the United States and in conflict with current National Law, **including the exceptions found in 9 U.S.C. §1** so that the Convention would be enforced by the United States **only** to the extent that commercial relationships, which

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[8] McMahon, "Implementation of the United National Convention on Foreign Arbitration Awards in the United States," 2 J. Maritime L. 735, 743, n. 37 (1971).

[9] Quigley, "Accession by the United States to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards," 70 Yale Law Journal 1049, at 1080, n. 131 (1961).

were the subject of an arbitration agreement, were also "commercial relationships," as **defined by chapter one of Title 9**.

In Mr. Kearney's words:

> Paragraph 1 of article I of the Convention provides that the Convention applies to the recognition and enforcement of arbitral awards without any limitation as to the nature of the relationship that gave rise to the award. . . . However, paragraph 3 of article I of the Convention permits a state party to the Convention to file a declaration that the Convention will apply only to legal relationships that are considered as *commercial* under the national law of that state. As was stated in the hearings on the Convention, the United States will file such a declaration because our purpose in adhering to the Convention is for the beneficial effects it will produce for the foreign commerce of the United States and not to make any changes with respect to matters that are traditionally within the jurisdiction of the 50 States of the Union.
>
> Consequently it is necessary to include the substance of this limiting declaration in the legislation that implements the Convention. This is what the first sentence of section 202 intends. **It was not, of course, necessary to make any reference to the national law of the United States in the first sentence of section 202 because the definition of commerce contained in section 1 of the original Arbitration Act is the national law definition for**

> **the purposes of the declaration.** A specific reference, however, is made in section 202 to section 2 of title 9, which is the basic provision of the original Arbitration Act. [Emphasis added].[10]

This sentiment was expressed by not only the State Department but also by then **President of the United States, Lyndon B. Johnson.** In the concluding paragraph of the letter from President Johnson to the Senate asking for advice and consent to the accession to the Convention, President Johnson wrote "[T]he United States would declare that it will apply the convention only to differences . . . which are considered commercial under the **Federal law** of the United States."[11] [Emphasis added].

The construction of the arbitration statutory scheme by including the Convention in Chapter 2 of Title 9, after Chapter 1 which was re-titled "General Provisions" after the enactment of the Convention, the naming of the Title of Chapter 1, Section 1 "exceptions to the operation of Title", including the "seaman" exception, and the legislative history on the enabling legislation of the convention leads to the only rational conclusion in this case, that being that seaman are excluded from the provisions of the entirety of Title 9, including the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

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[10] Statement of Richard D. Kearney, Chairman of the Secretary of State's Advisory Committee on Private International Law, part of Appendix to Senate Report 91-702 [R. Vol. 1, at 158].

[11] Congressional Record – Senate, April 24, 1968, pgs. 10487-8. The President actually attached the Secretary of State's report to his letter to the Senate along with the enabling legislation.

II. ERRORS IN THE DECISION BELOW

In order to reach the desired result, forcing a seaman to arbitrate his statutory claims against his employer, the Court below committed reversible error by not only destroying the basic rules of statutory construction but also in failing to adhere to prior rulings of this Honorable Court.

Solely to reach its conclusion requiring this seaman to arbitrate, the Fifth Circuit:

1) Created a conflict between the Convention and the exclusions found in Chapter 1 of Title 9, and pursuant to 9 U.S.C. §208 which provides "Chapter 1 applies to actions and proceedings brought under this chapter to the extent that that chapter is not in conflict with this chapter or the Convention as ratified by the United States" struck down the exclusion for seaman because of this newly created conflict of convenience;

2) After creating this new conflict, the Court then discounted petitioner's examination of basic statutory construction, stating, while "helpful" to claimant, the argument did not convince the Court, which explained "[w]hile words in the title of a statute or the heading of a section can shed light on the meaning of an ambiguous word or phrase in the text of a statute, they cannot create an ambiguity where none otherwise would exist." *Francisco v. Stolt Achievement M/T*, 293 F.3d 270, 275 (5th Cir. 2002);

3) Then conveniently ignored the legislative history "helpful" to claimant by proclaiming that the State Department's analysis given to Congress explaining the Convention and enabling legislation was not effective

because the testifying Ambassador did not specifically mention the "seaman" exception nor was he a member of Congress. *Id* at 275-276; and finally,

4) For the first time in the 30 year history of the Convention, without any discussion or analysis whatsoever, the Court boldly declared that the Savings to Suitors clause to be subservient to the terms of the Convention. *Id* at 272.

A. NO CONFLICT EXISTS BETWEEN THE FAA AND THE CONVENTION

Without any substantive analysis, the appellate court found the exceptions in Chapter 1 of the FAA "conflicts with the Convention Act and 'with the Convention as ratified by the United States.'" *Id* at 274. The rational of this conflict was:

> The United States agreed to apply it [the Convention] 'only to differences arising out of legal relationships, whether contractual or not, which are considered commercial under the national law of the United States.' Neither the Convention nor the limiting language ratifying the Convention contemplate any exception for seamen employment contracts or employment contracts in general. While the ratification language expresses an intent to limit the reach of the Convention to commercial relationships, there is no indication that employment contracts or seamen employment contracts are not considered 'commercial'. *Id*.

The Convention itself does not define commerce or commercial relationships. In fact, the United States took advantage of Article I(3)'s provisions and ratified the

Convention with the explicit Declaration that "[t]he United States of America will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the United States."[12] At the time of the enactment, for the purposes of arbitration, the national law definition of commerce was found within the FAA at Chapter 1 which included the exception for seamen. One District Court addressing the issue has poignantly stated:

> Article One of the Convention provides a state the right to apply the Convention only to legal relationships that the state considers "commercial" under its national laws. (Internal citations omitted). When adopting the Convention, the United States exercised that right by declaring that:
>
> > The United States of America will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the United States.
> >
> > (Internal citations omitted).
>
> Based on the plain language of the FAA and the Convention, the Court concludes that United States arbitration law specifically excludes seafarers' contracts of employment from the scope of commercial contracts. *9 U.S.C. §1*. The exception

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[12] See, Text of Convention, as well as Declaration at footnote 29, set forth in the annotations, 9 U.S.C.A. §201; See also, 114 Congressional Record 29605 (1968) [R. Vol. 1, at 152].

> in section One of the FAA, which removes seamen's employment contracts from the scope of commercial contracts, applies to the entire title governing arbitration, not just the FAA. Because the Convention is part of Title IX, the exception applies to the Convention as adopted by the United States. Furthermore, section 208 of Chapter Two specifically incorporates the FAA into the Convention to the extent that the FAA does not conflict with the Convention. *9 U.S.C. §208*. This incorporation would include the "seamen contract exception." As a result, the seamen's employment contract exception cannot conflict with the Convention, because it must be read into the Convention as adopted by the United States. *Jaranilla v. Megasea Maritime Ltd.*, 171 F.Supp.2d 644 (E. D. Louisiana 10/12/01).

Scholars in the field of arbitration agree. George Washington University's Assistant Dean for International and Comparative Legal Studies and Professorial Lecturer in Law, Susan L. Karamanian opines:

> The ruling of a "conflict" between the Domestic FAA and the Convention as to whether the seamen's employment claims are subject to arbitration is questionable. As noted, in acceding to the Convention, the United States elected the Commercial Declaration.[321] In the Convention Act, however, Congress never defined "commercial." Nothing in the Convention Act precludes a court from defining "commercial" to exclude seamen's employment contracts consistent with the Domestic FAA's section 1.
>
> If anything, a reading that the Filipino seamen's claims are not arbitrable gives full effect to section 202. In section 202, Congress provided that "a transaction, contract, or agreement described in section 2 of [title 9]" falls under the Convention.[322]

> Section 2 of the Domestic FAA requires enforcement of a written provision in a contract evidencing a transaction "involving commerce" to settle disputes by arbitration.[323] Section 2, however, is subject to the exemptions of section 1, which include the exemption for seamen's employment contracts.[324] The courts in the Filipino seamen's cases elected to ignore section 1 and in doing so have misconstrued the scope of section 2 by not applying the section 1 exemptions.
>
> [321] See Commercial Declaration, supra note 109.
>
> [322] See 9 U.S.C. §202 (1994); supra note 114 and accompanying text.
>
> [323] 9 U.S.C. §2.
>
> [324] **The court in Francisco erroneously stated that section 202 "can be read to include the types of transactions described in Section 2 without incorporating the exclusions of Section 1." 2001 U.S. Dist. LEXIS 3902, at 12. The U.S. Supreme Court has stated that section 1 provides the exemption from the "basic coverage authorization under §2." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001).**

Susan L. Karamanian, The Road To The Tribunal And Beyond: International Commercial Arbitration And United States Courts, 34 Geo. Wash. Int'l Rev. 17, 65 (2002).

Franciso's holding that the "General Provisions" exclusions of 9 U.S.C. §1, entitled "'Maritime Transactions' and 'Commerce' Defined: Exceptions to the Operations of Title", to be in conflict with, and therefore inapplicable to the Convention, renders the entire United States "commercial reservation" to the New York Convention meaningless.

Without the Chapter 1 exceptions to the Title, there are no "commercial reservations" whatsoever. If the "commercial reservations" are not found in the exceptions to the operation of the title, then where are the "commercial reservations" to be found?

B. RULES OF STATUTORY CONSTRUCTION REQUIRE REVIEW

The appellate Court's decision nullifies the seamen exception with respect to the entirety of chapters 2 and 3 of the FAA and destroys the commercial reservation found in footnote 29 to 9 U.S.C. §201. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme. *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989). It is "a cardinal principle of statutory construction" that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *Duncan v. Walker*, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001) (internal quotation marks omitted); See also *United States v. Menasche*, 348 U.S. 528, 538-539, 75 S.Ct. 513, 99 L.Ed. 615 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute'" (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152, 2 S.Ct. 391, 27 L.Ed. 431 (1883))); "[W]ere we to adopt [Andrews'] construction of the statute," the express exception would be rendered "insignificant, if not wholly superfluous."; *Duncan*, 533 U.S., at 174, 121 S.Ct. 2120, 150 L.Ed. 251. We are "reluctant to treat statutory terms as surplusage in any setting," *ibid.*, (internal alteration and quotation marks omitted), and we decline to do so here.

The appellate Court's decision ignores the plain language, structure, lay-out, heading and punctuation of the statutes involved (that had been presented and approved by Congress, and signed into law by the President) even where such components precisely follow the enacting clause, as here. Scholars, who have studied the origin of the oft-cited English doctrine that titles cannot be used for statutory interpretation, note that it derives from "early English parliamentary practice" under which "the title of an act was not prepared by the legislative body but was supplied by a clerk of Parliament." 2A Norman Singer, *Statutes and Statutory Construction* §47.03 (6th ed. 2000). However,

> "[I]n modern practice the title is adopted by the legislature, more thoroughly read than the act itself, and in many states is the subject of constitutional regulation. It is not an enacting part, but is in some sort a part of the act, though only a formal part, and this is held to be true even in states which have no constitutional provision on the subject. By statute; it was resorted to only in cases of doubt for such aid as it could afford in removing ambiguities. . . . But if the meaning is doubtful, the title, if expressive, may have the effect to resolve the doubts by extension of the purview, or by restraining it, or to correct an obvious error; for in ascertaining the intention nothing is to be rejected from which aid can be derived; therefore, the title of an act may claim a degree of notice, and is entitled to its share of consideration. . . . " *Lewis' Sutherland Statutory Construction*, 2nd Edition, Vol. II, Section 339, pg. 650.

The rule should not be applied in those jurisdictions in this country where the title and section headings form

part of the act, and thus constitute valuable intrinsic "tools available for the resolution of a doubt" because they can "shed light on an ambiguous phrase." See, Norman Singer, *supra,* at pg. 47:03 (citing *Brotherhood of Railroad Trainmen v. Baltimore & O. R. Co.,* 331 U.S. 519, 529, 67 S.Ct. 1387, 1392, 91 L.Ed. 1646 (1947)); See also, *INS v. National Center for Immigrants' Rights, Inc.*, 502 U.S. 183, 189, 112 S.Ct. 551, 556, 116 L.Ed.2d 546 (1991) (titles within a statute "can aid in resolving an ambiguity in the legislation's test"); See also, *United States National Bank of Oregon v. Independent Ins. Agents of America, Inc.,* 508 U.S. 439, 113 S.Ct. at 2184 (1993) (considering the layout of "introductory phrases" in two statutes in aid of their interpretation.)

The Court should not assume that Congress and the President did not intend the phrase "operation of title" to remain in effect when Congress amended the FAA to incorporate the enabling legislation enacting the Convention. The fact that after bicameral process and presentment to the President in 1970, the Convention Act (9 U.S.C. §201 et seq.) was placed within Title 9, therefore, evidences the exceptions found in Chapter 1 to also be applied to Chapter 2 of Title 9. Such placement, which makes Chapter 2 of Title 9 the equivalent of the Convention Act, points to the basic compatibility of that Act with the surrounding body of law with which it was integrated.

There is no evidence whatsoever expressed in the FAA that the exceptions placed in Chapter One do not apply to the entire Title. In instances where Congress has enacted statutes entitled "General Provisions" and chose to limit the applicability of those general provisions to certain Chapters within a Title, Congress has expressed that intent specifically and clearly. For example, in drafting

and enacting a statute (45 U.S.C. §151) applying to Railway Workers, which also applies to seamen, limiting the definitions included within "General Provisions" to a specific Chapter, Congress explicitly used the unquestionable language: "**When used in this chapter and only for the purposes of this chapter –.**" (Emphasis added). This was not done when amending and enacting the FAA to include the Convention. In fact, the exact opposite was done. Chapter 1 was entitled "General Provisions" and included the exceptions that were to apply to the entire Title. The decisions below have judicially amended 9 U.S.C. §1 to read "**When used in this chapter and only for the purposes of this chapter –**" without Congressional hearings, debate, vote or signature of the President.

Other intrinsic evidence of the intent behind the placement of the Convention Act in Title 9 is contained in §208, which provides for the "residual application" of Chapter 1 over Chapter 2 of Title 9.

Thus, if this Court considers all components in the legislative bill approved by Congress and enacted into law, there is no ambiguity. The best reading of the statutes at issue accords with principles of strict construction and results in the conclusion that the exception for seamen's employment contracts contained in §1 applies **title-wide**, i.e. to actions filed under Chapters 1 and 2 of Title 9.

C. LEGISLATIVE HISTORY SUPPORTS REVERSAL

As a matter of course, a review of legislative history is not required absent some finding of ambiguity or conflict amongst statutes. Here, a historical review is applicable

because the appellate Court found that Chapter 1's exceptions conflict with Chapter 2. *Francisco*, *supra*, at 275.

This Court recently reviewed in detail the "sparse" legislative history of the FAA in *Circuit City Stores, Inc. v. Adams,* 121 S.Ct. 1302 (2001) and stated:

> As the conclusion we reach today is directed by the text of §1, we need not assess the legislative history of the exclusion provision. See *Ratzlaf v. United States*, 510 U.S. 135, 147-148, 114 S.Ct. 655, 126 L.Ed.2d 615 (1994) ("[W]e do not resort to legislative history to cloud a statutory text that is clear"). We do note, however, that the legislative record on the §1 exemption is quite sparse. Respondent points to no language in either committee report addressing the meaning of the provision, nor to any mention of the §1 exclusion during debate on the FAA on the floor of the House or Senate. Instead, respondent places greatest reliance upon testimony before a Senate subcommittee hearing suggesting that the exception may have been added in response to the objections of the president of the International Seamen's Union of America. See Hearing on S. 4213 and S. 4214 before a Subcommittee of the Senate Committee on the Judiciary, 67th Cong., 4th Sess., 9 (1923). Legislative history is problematic even when the attempt is to draw inferences from the intent of duly appointed committees of the Congress. It becomes far more so when we consult sources still more steps removed from the full Congress and speculate upon the significance of the fact that a certain interest group sponsored or opposed particular legislation. *Cf. Kelly v. Robinson*, 479 U.S. 36, 51, n. 13, 107 S.Ct. 353, 93 L.Ed.2d 216 (1986) ("[N]one of

those statements was made by a Member of Congress, nor were they included in the official Senate and House Reports. We decline to accord any significance to these statements"). We ought not attribute to Congress an official purpose based on the motives of a particular group that lobbied for or against a certain proposal – even assuming the precise intent of the group can be determined, a point doubtful both as a general rule and in the instant case. It is for the Congress, not the courts, to consult political forces and then decide how best to resolve conflicts in the course of writing the objective embodiments of law we know as statutes.

Nor can we accept respondent's argument that our holding attributes an irrational intent to Congress. "Under petitioner's reading of §1," he contends, "those employment contracts *most* involving interstate commerce, and thus most assuredly within the Commerce Clause power in 1925 . . . are *excluded* from [the] Act's coverage; while those employment contracts having a *less* direct and less certain connection to interstate commerce . . . would come *within* the Act's affirmative coverage and would not be excluded." (Internal citations omitted).

We see no paradox in the congressional decision to exempt the workers over whom the commerce power was most apparent. To the contrary, it is a permissible inference that the employment contracts of the classes of workers in §1 were excluded from the FAA precisely because of Congress' undoubted authority to govern the employment relationships at issue by the enactment of statutes specific to them. By the time the FAA was passed, Congress had already enacted federal legislation providing for the arbitration of

disputes between seamen and their employers, see Shipping Commissioners Act of 1872, 17 Stat. 262. When the FAA was adopted, moreover, grievance procedures existed for railroad employees under federal law, see Transportation Act of 1920, §§300-316, 41 Stat. 456, and the passage of a more comprehensive statute providing for the mediation and arbitration of railroad labor disputes was imminent, see Railway Labor Act of 1926, 44 Stat. 577, 46 U.S.C. §651 (repealed). It is reasonable to assume that Congress excluded "seamen" and "railroad employees" from the FAA for the simple reason that it did not wish to unsettle established or developing statutory dispute resolution schemes covering specific workers.

As for the residual exclusion of "any other class of workers engaged in foreign or interstate commerce," Congress' demonstrated concern with transportation workers and their necessary role in the free flow of goods explains the linkage to the two specific, enumerated types of workers identified in the preceding portion of the sentence. It would be rational for Congress to ensure that workers in general would be covered by the provisions of the FAA, while reserving for itself more specific legislation for those engaged in transportation. See *Pryner v. Tractor Supply Co.*, 109 F.3d, at 358 (1997) (Posner, C.J.). Indeed, such legislation was soon to follow, with the amendment of the Railway Labor Act in 1936 to include air carriers and their employees, see 49 Stat. 1189, 45 U.S.C. §§181-188.

Legislative history of the amendment to the FAA to enact the Convention is even more difficult to locate, however, what has been found (infra at pg. 9) evidences petitioner's reading of the statutory scheme, that is the

commercial reservation to the Convention was the national law definition as found in the pre-amended FAA and the exclusions found in Chapter 1's "General Provisions" are to apply to the entirety of Title 9, including Chapter 2.

Dean Karamanian's analysis of the legislative history comports with applicant's reading:

> Further, the Convention Act's legislative history indicates that "the definition of commerce contained in section 1 of the [Domestic FAA] is the national law definition for the purposes of the declaration [limiting the application of the Convention to commercial matters]."[325] The definition of commerce in section 1 would obviously exclude the seamen's employment contracts. Jude Clement in Gavino refused to consider the legislative history, holding that "the conclusions of Lejano and Francisco are supported by a plain reading of [section 202]."[326] Judge Vance in Francisco must have been unaware of the Convention Act's legislative history when she wrote "there is no reason to believe that Congress intended the exclusions in Section 1 to apply to foreign workers covered by international arbitration agreements."[327] This statement is both incorrect as to the Convention Act's legislative history and even as to Congress's intent as to section 1. Section 1 unequivocally excludes from arbitration "contracts of employment of seamen . . . engaged in foreign or interstate commerce."[328]

[325] S. Comm. on Foreign Relations, Foreign Arbitral Awards, S. Rep. No. 91-702, at 6 (1970) (**the Commercial Declaration "is [intended] to bring the scope of the convention within the type of matters which is generally dealt with in the [Domestic] Federal Arbitration Act"**); see also Francisco, 2001 U.S. Lexis 3902, at 9.

[326] Gavino, 2001 U.S. Dist. LEXIS 11897, at 4 n.4.

[327] Francisco, 2001 U.S. Dist. LEXIS 3902, at 13.

[328] 9 U.S.C. §1 (1994); supra note 47 and accompanying text.

Susan L. Karamanian, The Road To The Tribunal And Beyond: International Commercial Arbitration And United States Courts, 34 Geo. Wash. Int'l L. Rev. 17, 66 (2002).

D. UNIFORMITY OF ADMIRALTY LAW REQUIRES REVERSAL

Just as it is the congressional policy manifested in the Federal Arbitration Act that requires courts liberally to construe the scope of arbitration agreements covered by that Act, it is the congressional intention expressed in some other statutes on which the courts must rely to identify any category of claims as to which agreements to arbitrate will be held unenforceable. See *Wilko v. Swan*, 346 U.S. at 434-435, 74 S.Ct. at 186-187 (1953) (reversed on other grounds); *Southland Corp. v. Keating*, 465 U.S. at 16, n. 11, 104 S.Ct. at 861, n. 11, 79 L.Ed.2d 1 (1984); *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. at 224-225, 105 S.Ct. at 1244-1245, 84 L.Ed.2d 158 (1985) (concurring opinion).

In *Wilko*, citing *Boyd v. Grand Trunk Western R. Co.*, 338 U.S. 263, 70 S.Ct. 26, 94 L.Ed. 55, this Court stated unequivocally that seamen and railway workers have unfettered access to the judiciary to resolve employment related disputes:

> This accords with *Boyd v. Grand Trunk Western R. Co.*, 338 U.S. 263, 70 S.Ct. 26, 94 L.Ed. 55 (1949). We there held invalid a stipulation restricting an employee's choice of venue in an action under the Federal Employers' Liability Act, 45 U.S.C.A. §51 et seq. Section 6 of that Act permitted

> suit in any one of several localities and Section 5 forbade a common carrier's exempting itself from any liability under the Act. Section 5 had been adopted to avoid contracts waiving employers' liability. It is to be noted that in words it forbade exemption only from 'liability.' **We said the right to select the 'forum' even after the creation of a liability is a 'substantial right' and that the agreement, restricting that choice, would thwart the express purpose of the statute.** We need not and do not go so far in this present case. By the terms of the agreement to arbitrate, petitioner is restricted in his choice of forum prior to the existence of a controversy. (Emphasis added)

It is the function of this Court to overrule binding precedent and not the function of the lower courts. See *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 109 S.Ct. 1917, 490 U.S. 477, 104 L.Ed.2d 526 (1989) (Court of Appeals should follow cases which directly control, leaving to the Supreme Court prerogative of overruling its own decisions, if the precedent of the Supreme Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions.) In the instant case, the lower courts' decisions attempt to overrule not only *Boyd*, but also *Atchison, Topeka and Santa Fe Railway Company v. Buell*, 480 U.S. 557, 107 S.Ct. 1410, 94 L.Ed.2d 563 (1987), and *U.S. Bulk Carriers v. Arguelles*, 400 U.S. 351, 27 L.Ed.2d 456, 91 S.Ct. 409 (1971). In *Atchison, Topeka and Santa Fe Railway Company,* this Court refused to enforce mandatory arbitration based upon the Railway Labor Act,[13] finding F.E.L.A.'s (and

[13] 45 U.S.C. §151, et seq.

therefore the Jones Act's) provisions override the arbitration requirement and rejected the conflicting statutory arbitration requirement in favor of the longstanding law of affording railway employees and, therefore, seamen, judicial remedies.[14]

In fact, this Court has never required seamen to arbitrate their claims for wages or injuries and has expressly allowed each seaman his right to a judicial forum. *U.S. Bulk Carriers v. Arguelles,* 400 U.S. 351, 27 L.Ed.2d 456, 91 S.Ct. 409 (1971). In *Arguelles* the district court dismissed a seaman's claim against his employer for wages because a collective bargaining agreement provision required arbitration. This Court reversed, noting that while the Labor Management Relations Act of 1947[15] provides a federal remedy to enforce arbitration in "industry" affecting commerce, this alternative method to resolve disputed claims did not deprive a seaman of his right to a judicial remedy because "Seamen from the start were wards of admiralty . . . the federal courts remained as the guardians of seamen, the agencies chosen by Congress, to enforce their rights – a guardian concept which, as far as wage claims are concerned, is not much different from what it was in the 18th Century."[16] This Court continued "while an arbitrator in the area may have expertise, for 180 years federal courts have been protecting the rights of

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[14] FELA provides for a judicial forum (45 U.S.C. §59) as does the Jones Act not only by incorporating FELA but because 46 U.S.C. App. §688 specifically provides "jurisdiction in such actions shall be under **the Court** of the district in which the defendant employer resides or in which his principal office is located."

[15] 621 Stat. 136.

[16] *Arguelles,* at pg. 355.

seaman and are not without knowledge in the area."[17] The Court further found " . . . no suggestion in the legislative history of the Labor Relations Management Act of 1947 that grievance procedures and arbitration were . . . to assume part or all of the roles served by the federal courts protection of the rights of seamen since 1790."[18] To the contrary, the Court noted that the Wage Statute " . . . implies a right to make the claim to the court and not a duty to make it before a grievance committee or before an arbiter."[19] The current wage statute expressly provides that, "The courts are available to the seaman for the enforcement of this section."[20] The same is true for the enforcement of a claim under the Jones Act. In further recognition of the existing law providing a judicial forum for maritime injury and wage claims, the law of the United States, originally embodied in Title 9 U.S.C. §1, excluded the contracts of seamen, railroad employees, or any other class of workers engaged in foreign or intrastate commerce. It is obvious that Congress intended to continue to protect this class of workers. It would make absolutely no sense for Congress to embody this policy in Section 1 of Title 9 but eviscerate the policy in subsequent sections of the very same Title.

There is nothing in the history of the United States National Law or the Convention to suggest Congressional

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[17] *Id.*

[18] *Id.*, at pg. 356.

[19] *Id,* at pg. 354.

[20] 46 U.S.C. 10313(i).

intent[21] to deprive a Jones Act seaman's right to a judicial remedy, whether it be a claim for wages or a damage claim for injuries.

CONCLUSION

The United States Court of Appeals for the Fifth Circuit erred in forcing a Jones Act seaman to arbitrate a valid claim for personal injuries which was first properly commenced in a Louisiana State Court, pursuant to the Savings to Suitors Clause.

For the reasons set forth herein, it is respectfully submitted that this Court should grant this Petition for Writ of Certiorari, in order to correct the error committed below.

Respectfully submitted,

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[21] *Lujan-Armendariz v. I.N.S.*, 222 F.3d 728 (9th Cir. 2000): Repeals by implication are heavily disfavored and may be found only where two statutes are in irreconcilable conflict, or where one statute entirely displaces another; in either case, the repeal must be clear and manifest.

United States Court of Appeals,

Fifth Circuit.

Ernesto FRANCISCO, Plaintiff-Appellant,

v.

STOLT ACHIEVEMENT MT, a vessel bearing official number 1973; Stolt Achievement, Inc.; Stolt-Nielsen Transportation Group, Ltd.; Stolt Parcel Tankers, Inc., the operator and/or owner of the M/T STOLT ACHIEVEMENT,

Defendants-Appellees.

No. 01-30694.

June 4, 2002.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before *KING*, Chief Judge, and *REAVLEY* and *WIENER*, Circuit Judges.

REAVLEY, Circuit Judge:

In this appeal we conclude that the district court properly ordered the case to arbitration and accordingly affirm.

BACKGROUND

Appellant Ernesto Francisco, a Philippine national, was injured on a chemical tanker ship located on the Mississippi River. Francisco was employed aboard the M/T STOLT ACHIEVEMENT (the vessel), which was allegedly operated by Stolt-Nielsen Transportation Group, Inc., (Stolt) a Liberian corporation.

Stolt's "Crewing Manager" submitted an affidavit attesting that when Stolt hires Philippine seamen, it must comply with employment contract requirements of the Philippine Overseas Employment Administration. Francisco signed such a contract. The contract contains lengthy provisions addressing employee compensation and benefits in the event of work-related injury, illness, or death. It provides in section 29 of the "Standard Terms and Conditions" that in the event of "claims and disputes arising from this employment," the parties agree to arbitrate their disputes in the Philippines.[1] Section 31 of the same document provides that "[a]ny unresolved dispute, claim or grievance arising out of or in connection with this Contract . . . shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory."

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[1] Section 29 states: "In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the [Philippine] National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995 or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators." Section 10 of the Migrant Workers and Overseas Filipinos Act of 1995 provides that disputes submitted to the NLRC are resolved by arbitration. Hence, our reading of the contract is that all claims and disputes arising from the employment are subject to arbitration, regardless of whether there is a collective bargaining agreement and regardless of whether the parties opt to proceed before the NLRC.

Francisco sued Stolt in Louisiana state court, asserting claims under the Jones Act[2] and under general maritime law for unseaworthiness and for maintenance and cure. He alleged that suit in state court was authorized by the saving to suitors clause of 28 U.S.C. § 1333(1).

Stolt removed the case to federal district court, alleging that Francisco had signed an employment contract agreeing to arbitrate claims against Stolt in the Philippines, and that this agreement was subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention),[3] a convention to which the United States and the Philippines are both signatories. The United States implemented the Convention in 1970 through the enactment of 9 U.S.C. §§ 201-208 (hereinafter the Convention Act). Francisco filed a motion to remand the case to state court, and Stolt filed a motion to compel arbitration under 9 U.S.C. § 206. The district court denied the motion to remand, granted the motion to compel arbitration, and dismissed the suit. This appeal by Francisco followed.

DISCUSSION

Generally, the removal jurisdiction of the federal district courts extends to cases over which they have original jurisdiction.[4] "Any civil action of which the district courts have original jurisdiction founded on a claim or

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[2] 46 U.S.C. app. § 688.

[3] *Done* June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38, *reprinted in* 9 U.S.C.A. § 201 note.

[4] 28 U.S.C. § 1441(a).

right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties."[5] Under § 203 of the Convention Act,[6] "[a]n action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States." Notwithstanding the saving to suitors clause,[7] under § 205 of the Convention Act,[8]

> [w]here the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending.

The district court, therefore, had removal jurisdiction and subject matter jurisdiction if the pending dispute was one "falling under" the Convention.

The district court concluded that it should compel arbitration because this case fell under the arbitration provision of the employment contract, as well as the provisions of the Convention Act and the Convention.

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[5] 28 U.S.C. § 1441(b).

[6] 9 U.S.C. § 203.

[7] 28 U.S.C. § 1333 provides that the federal district courts have exclusive jurisdiction of "[a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

[8] 9 U.S.C. § 205.

Francisco essentially makes three arguments as to why the district court erred. He argues first that his case does not fall under the Convention Act because there is an exception making that Act inapplicable to seaman employment contracts. He argues second that, under the Convention itself, his case is not "capable of settlement by arbitration" and otherwise does not fall under the Convention. He argues third that his claims are not subject to the arbitration agreement.

A. *The Convention Act (9 U.S.C. §§ 201-208)*

The Convention Act provides that "[a] court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States."[9] In applying the Convention, we have held that it "contemplates a very limited inquiry by courts when considering a motion to compel arbitration," and that the court should compel arbitration if (1) there is an agreement in writing to arbitrate the dispute, (2) the agreement provides for arbitration in the territory of a Convention signatory, (3) the agreement arises out of a commercial legal relationship, and (4) a party to the agreement is not an American citizen.[10] "If these requirements are met, the Convention requires district courts to order arbitration."[11]

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[9] 9 U.S.C. § 206.

[10] *Sedco, Inc. v. Petroleos Mexicanos Mexican Nat'l Oil Co.*, 767 F.2d 1140, 1144-45 (5th Cir.1985).

[11] *Id.* at 1145.

These elements were met in the pending case. Francisco, a Philippine national, signed a written employment contract stating that claims and disputes arising from his employment, including personal injury claims, were subject to arbitration in the Philippines. The employment contract states that it shall be governed by the law of the Philippines and such conventions and treaties to which the Philippines is a signatory. The Philippines and the United States are both signatories to the Convention.[12]

Title 9 of the United States Code has two chapters relevant to this appeal. Chapter 1 contains the Federal Arbitration Act (Arbitration Act). Chapter 2 is the Convention Act. Francisco argues that under § 1 of the Arbitration Act,[13] seaman employment contracts are excluded from the reach of the Convention Act. He argues that this exclusion applies to the Convention Act because, under § 208 of the Convention Act,[14] the Arbitration Act "applies to actions and proceedings brought under [the Convention Act] to the extent that [the Arbitration Act] is not in conflict with [the Convention Act] or the Convention as ratified by the United States."

Francisco correctly points out that the Arbitration Act does not cover seaman employment contracts. Section 2 of the Arbitration Act[15] generally recognizes the validity of arbitration provisions "in any maritime transaction or a

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[12] 9 U.S.C. § 201 note (*see* notes following text of Convention indicating signatories).

[13] 9 U.S.C. § 1.

[14] 9 U.S.C. § 208.

[15] 9 U.S.C. § 2.

contract evidencing a transaction involving commerce." However, § 1 of the Arbitration Act[16] expressly excludes "contracts of employment of seamen" from the reach of the Arbitration Act.

This exclusion of seamen employment contracts in the Arbitration Act, however, conflicts with the Convention Act and "with the Convention as ratified by the United States" under § 208 of the Convention Act, and therefore is not applicable to the Convention Act. Article II(1) of the Convention itself is very broadly worded to provide that signing nations shall recognize arbitration agreements "in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration." The United States, in ratifying the Convention, agreed to apply it "only to differences arising out

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[16] Section 1 of the Arbitration Act, 9 U.S.C. § 1, states in its entirety:

> *§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title*
>
> "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

of legal relationships, whether contractual or not, which are considered as commercial under the national law of the United States."[17] Neither the Convention nor the limiting language ratifying the Convention contemplate any exception for seamen employment contracts or employment contracts in general. While the ratification language expresses an intent to limit the reach of the Convention to *commercial* relationships, there is no indication that employment contracts or seamen employment contracts are not considered "commercial."

In keeping with the ratification language, § 202 of the Convention Act states:

> An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is

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[17] 9 U.S.C.A. § 201 note (*see* footnote 29 to notes following text of Convention). This limiting language was authorized by Article I(3) of the Convention, which provides that a signatory "may declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration."

> incorporated or has its principal place of business in the United States.

Again, nothing in this language suggests an exception for seaman employment contracts. While the Arbitration Act contains such an exception, the language from § 202 of the Convention Act states only that the legal relationships covered by the Convention Act *include* those transactions covered by § 2 of the Arbitration Act. The Convention Act does not state that agreements falling under the Convention are *exclusively limited* to those which also fall under § 2 of the Arbitration Act, and makes no mention of the exclusion for seaman employment contracts found in § 1 of the Arbitration Act.

In short, the language of the Convention, the ratifying language, and the Convention Act implementing the Convention do not recognize an exception for seamen employment contracts. On the contrary, they recognize that the only limitation on the type of legal relationship falling under the Convention is that it must be considered "commercial," and we conclude that an employment contract is "commercial." Even if we were doubtful of the correctness of our conclusion, doubts as to whether a contract falls under the Convention Act should be resolved in favor of arbitration, in light of the Supreme Court's recognition generally of "the strong federal policy in favor of enforcing arbitration agreements,"[18] and its recognition that

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[18] *Dean Witter Reynolds, Inc. v. Byrd,* 470 U.S. 213, 217, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985).

> [t]he goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries.[19]

The Court has also recognized that the federal policy favoring arbitration "applies with special force in the field of international commerce."[20]

Francisco argues that as a matter of policy the Convention Act and the Arbitration Act should be applied uniformly. We cannot accept this argument. If the language of a statutory provision "is sufficiently clear in its context and not at odds with the legislative history, it is unnecessary to examine the additional considerations of policy . . . that may have influenced the lawmakers in their formulation of the statute."[21]

We note two other arguments which favor Francisco's position but do not ultimately alter our conclusion. Francisco argues that the exclusions of § 1 of the Arbitration Act are referred to in the statutory heading of § 1 as "exceptions to operation of *title*."[22] *Title* 9 of the United

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[19] *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n. 15, 94 S.Ct. 2449, 41 L.Ed.2d 270 (1974).

[20] *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985).

[21] *Aaron v. SEC*, 446 U.S. 680, 695, 100 S.Ct. 1945, 64 L.Ed.2d 611 (1980) (internal quotations omitted).

[22] *See* n. 16, *supra* (giving full heading and text to 9 U.S.C. § 1).

States Code includes the Arbitration Act in Chapter 1 and the Convention Act in Chapter 2. The use of the term "title" in the heading to § 1 therefore suggests that its exclusion of seaman employment contracts applies to both Acts.

While the use of the term "title" in the heading is helpful to Francisco, it does not change our conclusion that the plain language of the Convention Act, enacted long after § 1 of the Arbitration Act,[23] does not admit to an exception for seaman employment contracts. "While words in the title of a statute or the heading of a section can shed light on the meaning of an ambiguous word or phrase in the text of a statute, they cannot create an ambiguity where none otherwise would exist."[24]

Francisco also points to legislative history which is helpful to him. In a Senate hearing on February 9, 1970, Richard Kearney, the chairman of a State Department advisory committee, gave the following testimony:

> [P]aragraph 3 of article I of the Convention permits a state party to the Convention to file a declaration that the Convention will apply only to legal relationships that are considered as commercial under the national law of that state. . . .

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[23] Section 1 of the Arbitration Act was part of the 1947 reenactment and codification of the Federal Arbitration Act, which comprised the entirety of Title 9 when reenacted. *See* 61 Stat. 669, 674 (1947). The Convention Act, Pub.L. No. 91-368, 84 Stat. 692 (1970), was enacted in 1970.

[24] *Natural Res. Def. Council v. EPA*, 915 F.2d 1314, 1321 (5th Cir.1990).

> [T]he United States will file such a declaration. . . .
>
> Consequently it is necessary to include the substance of this limiting declaration in the legislation that implements the Convention. This is what the first sentence of section 202 intends. It was not, of course, necessary to make any reference to the national law of the United States in the first sentence of section 202 because the definition of commerce contained in section 1 of the original Arbitration Act is the national law definition for the purposes of the declaration. A specific reference, however, is made in section 202 to section 2 of title 9, which is the basic provision of the original Arbitration Act.[25]

This testimony suggests that the definition of a transaction involving "commerce" in §§ 1 and 2 of the Arbitration Act is the same as the definition of a "legal relationship . . . which is considered as commercial" falling under the Convention Act. However, the witness does not specifically address whether the exclusion in § 1 of seaman employment contracts is also applicable to the then-proposed § 202 of the Convention Act.

Furthermore, the testimony of a witness not a member of Congress cannot bind this court where the plain language of the Convention Act does not provide an exception for seaman employment contracts. "Legislative history is problematic even when the attempt is to draw inferences from the intent of duly appointed committees of

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[25] S.Rep. No. 91-702, at 6 (1970).

the Congress."[26] As discussed above, § 202 of the Convention Act states that a contract considered commercial *includes* those contracts described in § 2 of the Arbitration Act, makes no mention of § 1, and does not state that *only* those contracts described in § 2 of the Arbitration Act "fall under" the Convention. "Courts should not rely on inconclusive statutory history as a basis for refusing to give effect to the plain language of an Act of Congress. . . ."[27]

B. *The Convention Itself*

Francisco argues that, aside from the issue of the scope of the Convention Act, the Convention itself is inapplicable to his suit. He bases this argument on his claim that on September 11, 2000, the Supreme Court of the Philippines suspended section 20(G) of the standard terms and conditions of his employment contract. We assume without deciding that Francisco is correct regarding the suspension of section 20(G) by the Philippine court and the applicability of this change to his case.

Section 20 of the terms and conditions addresses compensation and benefits due the seaman for injury or illness. Section 20(G) provides:

> The seafarer . . . acknowledges that payment for injury, illness, incapacity, disability or death of the seafarer under this contract shall cover all claims arising from or in relation with or in the

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[26] *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 120, 121 S.Ct. 1302, 149 L.Ed.2d 234 (2001).

[27] *Hubbard v. United States*, 514 U.S. 695, 708, 115 S.Ct. 1754, 131 L.Ed.2d 779 (1995).

> course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault, or negligence under the laws of the Philippines or any other country.

Francisco argues that under the terms of the Convention the suspension of section 20(G) means that the Convention no longer governs his claims against Stolt. We cannot agree with this argument. The suspension of section 20(G) only means that the seaman no longer acknowledges that the receipt of scheduled payments set out in the contract are the only benefits he can recover from his employer.

Francisco argues that under Article II(1) of the Convention, the treaty only applies to "differences . . . in respect of a defined legal relationship . . . concerning a subject matter capable of settlement by arbitration." Francisco similarly relies on Article V(2)(a) of the Convention, which states that recognition and enforcement of an arbitral award may be refused if "[t]he subject matter of the difference is not capable of settlement by arbitration under the law of" the country where enforcement is sought. The suspension of section 20(G) does not, in our view, render the dispute incapable of settlement by arbitration under these provisions. Even if section 20(G) is rendered a nullity, the parties still agree to arbitrate their dispute under section 29 of the terms and conditions of the contract, discussed above; section 20(G) only limits the claims available to Francisco. If anything, the suspension would seem to give the arbitrators greater discretion to grant the relief to which Francisco thinks he is entitled. We note that in an arbitration before the Philippine National Labor Relations Commission (NLRC), Section 10 of the Migrant Workers and Overseas Filipino Act of 1995,

included in the record, does not appear to limit awards to those damages set out in the employment contract. Instead, it provides that in cases before the NLRC labor arbitrators "shall have the original and exclusive jurisdiction to hear and decide . . . the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages."

Francisco also relies on Articles V(1)(c) and (e) of the Convention. Article V(1) provides that recognition and enforcement of an arbitral award may be refused "at the request of the party against whom it is invoked," if, under subpart (c), "[t]he award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration. . . . " First, Article V(1) by its terms can only be invoked by a party resisting an award. No award has been made and Francisco would have no reason of which we are aware to resist the enforcement of an arbitration award made to him under the employment contract. Second, the mere suspension of a contract term stating that the remedies enumerated in the contract are exclusive would not, in our view, make an arbitration in the Philippines one dealing with a dispute "not contemplated by and not falling within the terms of the submission to arbitration" under Article V(1)(c) and would not render an arbitration decision one "on matters beyond the scope of the submission to arbitration" under that provision.

Article V(1)(e) provides that recognition and enforcement of an award may be refused if "[t]he award has not yet become binding on the parties, or has been set aside or

suspended by a competent authority of the country in which, or under the law of which, that award was made." Again, this provision only comes into play after an award has been made, and only at the request of the party resisting enforcement of the award, and is inapplicable here. Further, the mere fact that one clause of the employment contract purporting to limit the relief available to Francisco can no longer be enforced in the Philippines does not mean that a Philippine authority has "set aside" an award under subpart (e). If anything, the suspension of section 20(G) of the contract means that Francisco is eligible for greater relief from the Philippine arbitrators than before the suspension of that section's limitation on the employee's remedies.

C. *The Employment Contract*

Francisco separately argues that his claims against Stolt are federal and general maritime tort claims that are not covered by the arbitration provision of the employment contract. The contract clearly provides remedies for work-related personal injuries, and states in paragraph 29 that "claims and disputes arising from this employment" are subject to arbitration in the Philippines. The arbitration provision is not by its language limited to contract claims but covers all claims "arising from this employment." Francisco alleged in his original petition that his injuries were sustained "in the course and scope of his employment." In *Marinechance Shipping, Ltd. v. Sebastian,*[28] we addressed whether a forum selection clause in a seaman

[28] 143 F.3d 216 (5th Cir.1998).

employment contract applied to tort claims. We held that the clause – providing that "any and all disputes or controversies arising out of or by virtue of this Contract" shall be litigated in the Philippines – applied to tort claims brought by two Philippine seamen injured aboard a vessel while it was located in the Mississippi River.[29] We do not agree that the language of the forum selection clause in *Marinechance* is meaningfully different from the language of the arbitration clause in the pending case for purposes of deciding whether tort claims are covered, and note that "foreign arbitration clauses are but a subset of foreign forum selection clauses in general."[30]

Francisco also contended at oral argument that an employee like himself who was not subject to a collective bargaining agreement (CBA) is not required to submit his claim to arbitration in the Philippines. Assuming that this argument was timely made, we reject it. Paragraph 29 of the Terms and Conditions states that parties subject to a CBA *shall* submit the claim or dispute to arbitration, but that parties not subject to a CBA *may* submit the claim or dispute "*to either the original and exclusive jurisdiction of the*" NLRC "*or to the original and exclusive jurisdiction of* the voluntary arbitrator or panel or arbitrators." As explained above in our footnote 1, cases submitted to the NLRC are resolved by arbitration. Accordingly, even though the contract uses the word "may" when describing the procedures available to an employee not covered by a CBA, the only two options available to such an employee

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[29] *Id.* at 223.

[30] *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer,* 515 U.S. 528, 534, 115 S.Ct. 2322, 132 L.Ed.2d 462 (1995).

both require arbitration. Especially in light of our general rule, recognized in a Convention Act case, that "whenever the scope of an arbitration clause is in question, the court should construe the clause in favor of arbitration,"[31] we read the contract as mandating arbitration of this dispute in the Philippines.

AFFIRMED.

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[31] *Sedco*, 767 F.2d at 1145.

United States District Court, E.D. Louisiana.

Ernesto FRANCISCO

v.

M/T STOLT ACHIEVEMENT, Stolt Achievement, Inc., Stolt-Nielsen Transportation Group, Ltd.

No. Civ.A. 00-3532.

March 23, 2001.

ORDER AND REASONS

VANCE, J.

Before the Court is defendants' motion to compel arbitration and stay, or in the alternative, to dismiss. For the reasons stated below, defendants' motion is GRANTED.

I. BACKGROUND

Plaintiff, Ernesto Francisco, is a Philippine national who was employed aboard the M/T STOLT ACHIEVEMENT, a ship under the Cayman Islands flag and registry. The vessel was owned by Stolt Achievement, Inc., a Cayman Islands corporation, and operated by Stolt-Nielsen Transportation Group, Ltd., a Liberian corporation. Plaintiff was injured aboard the vessel while it was on the Mississippi River in Louisiana headed for the Port of New Orleans. Plaintiff filed suit against his employers in state court under the "saving to suitors" clause of 28 U.S.C. § 1333, seeking damages under the Jones Act and the general maritime law, as well as maintenance and cure.

On November 29, 2000, defendants, M/T STOLT ACHIEVEMENT, Stolt Achievement, Inc., and Stolt-Nielsen Transportation Group, Ltd., removed the case to

this Court. Defendants now move to compel arbitration and stay, or in the alternative, to dismiss plaintiff's claims.

II. DISCUSSION

Plaintiff was employed by Stolt Achievement Inc. pursuant to an employment contract. This contract incorporated the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels, as approved by the Philippine Overseas Employment Administration (POEA), a division of the Department of Labor and Employment of the Republic of Philippines. Plaintiff signed both the employment contract and the incorporated Standard Terms and Conditions. (*See* Defs.' Mem. Supp. Mot. to Compel Arbitration Ex. 1.) These Terms and conditions contain the following provision regarding arbitration of claims:

> In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipino Act of 1995 or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the

> accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.

(*See* Defs.' Mem. Supp. Mot. to Compel Arbitration Ex. B, Section 29.) The NLRC uses arbitration to resolve disputes within its jurisdiction. *See* Migrant Workers and Overseas Filipino Act of 1995 § 10.

Relying on the foregoing provision of the standard Terms and Conditions, defendants move to compel arbitration pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), 9 U.S.C. § 201, *et seq.* Title 9 of the United States Code deals with arbitration and is divided into three chapters. Chapter 1 (9 U.S.C. §§ 1-16) addresses domestic arbitration agreements. Chapter 2 (9 U.S.C. §§ 201-208) deals with the Convention and its enabling legislation. *See Sedco, Inc. v. Petroleos Mexicanos Mexican Nat'l Oil, Co.*, 767 F.2d 1140, 1146 (5th Cir.1985). Section 201 of the Arbitration Act provides that the Convention "shall be enforced" by United States courts; Section 206 allows district courts to order parties to a Convention arbitration even outside the United States. *See id.* The provisions of Chapter 1 apply to Chapter 2 to the extent that the provisions of Chapter 1 are not in conflict with those of Chapter 2. 9 U.S.C. § 208.

The Fifth Circuit in *Sedco* described the scope of the Court's inquiry when considering a motion to compel arbitration under the Convention. *See id.* at 1144. Courts consider: (1) whether there is an agreement in writing to arbitrate the dispute; (2) does the arbitration agreement provide for arbitration in the territory of a Convention signatory; (3) does the agreement to arbitrate arise out of a commercial legal relationship; and (4) is a party to the

agreement not an American citizen. *See id.* at 144-45. "If these requirements are met, the Convention requires district courts to order arbitration." *See id.* at 1145. Whenever the scope of an arbitration clause is at issue, courts should construe the clause in favor of arbitration. *See id. (citing United Steel Workers v. Warrior & Gulf Navigation Co.,* 363 U.S. 574, 582-83, 80 S.Ct. 1347, 1353, 4 L.Ed.2d 1409 (1960)).

A. Does the Convention Apply to the Contract?

1. Is there an Agreement to Arbitrate in Writing?

In order for the Convention to apply, there must be an agreement in writing to arbitrate. The Court finds that such an agreement exists. The employment contract clearly sets forth that if there is a dispute, it must be submitted to arbitration. Plaintiff has tried to parse the language in the contract to argue that unless there is a collective bargaining agreement, arbitration is optional. The Court does not find this to be an accurate reading of the contract's terms. Again, the contract reads:

> In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipino Act

> of 1995 or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.

(*See* Defs.' Mem. Supp. Mot. to Compel Arbitration Ex. B, Section 29.) Under this provision, if there is a collective bargaining agreement, the parties must submit the dispute to the voluntary arbitrator or panel of arbitrators. If there is no collective bargaining agreement, the parties have their choice of submitting the dispute to the NLRC, which also uses arbitration, or to the voluntary arbitrator or panel of arbitrators. In either case, however, the dispute must be submitted to arbitration.

Plaintiff also argues that the Court should not enforce the arbitration agreement because the Filipino Supreme Court has temporarily suspended the application of Section 20(G) of the Standard Terms and Conditions incorporated in the contract. Section 20(G) states:

> the seafarer acknowledges that payment for injury, illness, incapacity, disability or death of the seafarer under this contract shall cover all claims arising from or in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault, or negligence under the laws of the Philippines or any other country.

(*See* Defs.' Mem. Supp. Mot. to Compel Arbitration Ex. B, Section 20.) Plaintiff claims that the suspension of this language undermines the enforceability of the arbitration

clause in the contract. However, Section 20(G) simply means that if a seafarer accepts benefits as provided under the contract's terms for death or disability, he waives the right to seek further benefits or damages under arbitration. (*See id.*) The suspension of Section 20(G) does not affect the applicability of the arbitration clause to disputes under the contract. The suspension affects the nature of the claims a plaintiff may assert if he accepts contract benefits. The suspension simply holds in abeyance the contract provision preventing a plaintiff from pursuing alternative remedies if he receives benefits under the contract.

2. Does the Agreement Provide for Arbitration in a Convention Signatory?

The contract requires that plaintiff arbitrate before either the NLRC or the voluntary arbitrator or panel of arbitrators. Section 29 of the contract provides that if the parties do not provide who the arbitrator will be, then the parties will choose from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Filipino Department of Labor and Employment. The contracts that the parties have provided to the Court do not identify who the arbitrators will be in the event of a dispute. Accordingly, they must choose from those accredited by the Philippine government. These provisions indicate that the arbitration must be in the Philippines. The Republic of Philippines is a signatory of the Convention. Therefore the second element is satisfied.

3. Does the Agreement Arise Out of a Commercial Relationship?

An employment contract is a commercial legal relationship, which is required for application of the Federal Arbitration Act. *See* 9 U.S.C. §§ 2, 202; *Circuit City Stores, Inc. v. Adams,* No. 99-1379, 2001 WL 2753205 (U.S.) (March 20, 2001) (interpreting 9 U.S.C. § 2); *Lejano v. K.S. Bandak,* Civ. A. No. 00-2990, (E.D.La. Nov. 3, 2000) (*citing Prograph Int'l, Inc. v. Barhivdt,* 928 F.Supp. 983 (N.D.Cal.1996)). Section 202 of Chapter 2 of the Federal Arbitration Act provides that the Convention applies to arbitration agreements arising out of commercial relationships as follows:

> An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention.

Section 2 of Chapter 1 provides that:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Section 1 of Chapter 1 sets forth the exclusions to Section 2. *See Circuit City,* 2001 WL 2753205, at *3.

Section 1 excludes from the scope of Section 2 "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The Supreme Court in *Circuit City* held that Section 2 applies to all employment contracts except those by seamen and other transportation workers. *See id.*

The exclusion of employment contracts of seamen from the domestic arbitration laws does not apply to contracts covered by the Convention. This follows because § 208 of Chapter 2 incorporates Chapter 1 into the Convention only "to the extent that that chapter is not in conflict with this chapter or the Convention as ratified by the United States." Like our sister court in *Lejano v. K.S. Bandak,* Civ. A. No. 00-2990, the Court finds that the seamen exclusion of § 1 does not apply to Chapter 2 and the Convention.

In *Lejano,* the court explained that § 202 covers arbitration agreements arising out of all commercial, legal relationships, including "a transaction, contract or agreement described in section 2. . . . " Section 2 refers to a "maritime transaction or a contract evidencing a transaction involving commerce. . . . " Thus, § 202 applies to all legal relationships that are commercial, while § 2 is limited by § 1 to exclude from the universe of commercial contracts, "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The Court agrees with the *Lejano* court that to the extent that § 1 conflicts with § 202, § 208 precludes § 1 exclusions from applying to the Convention. Thus, seamen contracts are not excluded from the Convention.

Alternatively, Section 202 can be read to avoid the conflict. This follows because Section 202 refers to the types of commercial transactions described in Section 2. Section 202 makes no reference to Section 1. Accordingly, Section 202 can be read to include the types of transactions described in Section 2 without incorporating the exclusions of Section 1.

The result reached here is consistent with the policy behind adopting the Convention. As the Supreme Court observed in *Scherk v. Alberto-Culver Co.:*

> [t]he goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries.

417 U.S. 506, 520 n. 15, 94 S.Ct. 2449, 2457 n. 15, 41 L.Ed.2d 270 (1974). In addition, Article II(1) of the Convention states the policy that arbitration agreements are to be recognized by the states adopting the Convention:

> Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

Id. Further, the Supreme court noted in *Circuit City* that Congress may have exempted seamen and transportation workers from the scope of domestic arbitration because it

would provide for these workers by specific legislation. *See Circuit City,* 2001 WL 2753205, at *9. If so, there is no reason to believe that Congress intended the exclusions in Section 1 to apply to foreign workers covered by international arbitration agreements. Therefore, the Court finds that seaman contracts involve commercial relationships subject to the Convention.

Plaintiff argues that because he asserts a tort claim, his claim does not arise out of his employment contract, and that the arbitration clause therefore does not apply to this claim. In a similar context, which involved interpreting the scope of a forum selection clause, the Supreme Court looked to the language of the contract to determine whether tort disputes were included. *See Carnival Cruise Lines, Inc. v. Shute,* 499 U.S. 585, 111 S.Ct. 1522, 113 L.Ed.2d 622 (1991). It found that a provision stating that "all disputes and matters whatsoever arising under, in connection with or incident to this Contract" included a negligence (slip and fall) cause of action. *Id.* at 588, 111 S.Ct. at 1524. Similarly, in *Lejano v. K.S. Bandak,* 705 So.2d 158, 167 (La.1997), the Louisiana Supreme Court found that a forum selection clause encompassing all "[c]ases concerning the seafarer's service on the ship" included tort causes of action. Likewise, the Fifth Circuit has determined that courts should look to the language of the contract when determining which causes of action are covered under a forum selection clause. *See Marinechance Shipping Ltd. v. Sebastian,* 143 F.3d 216, 222-23 (5th Cir.1998). In *Marinechance,* the Court found that there was nothing in these types of contract clauses that justified limiting them to contract claims and that the provision stating that "any and all disputes arising out of or by virtue of this Contract" included tort causes of action

arising between a seaman and his employer. *See id.* In this case, the standard Terms and Conditions of the employment contract deal with work-related injuries, and plaintiff agreed to submit any "claims and disputes arising from this employment" to arbitration. Plaintiff's argument that he is not obligated to arbitrate tort claims is without merit.

4. Is One of the Parties to the Agreement Not an American Citizen?

This element is clearly satisfied. Plaintiff is a citizen and resident of the Philippines. Because the contract satisfies the above factors, the Court finds that the Convention applies to the contract.

5. Forum Selection

Lastly in addition to the above analysis, plaintiff urges the Court to analyze the validity of the arbitration clause under the principles applicable to forum selection clauses. Even if this analysis is proper, the argument is unavailing. The Supreme Court has consistently found forum-selection and choice-of-law clauses to be presumptively valid. *See Mitsui & Co. v. Mira M/V,* 111 F.3d 33, 35 (5th Cir.1997) (*citing Vimar Seguros y Reaseguros S.A. v. M/V SKY REEFER,* 515 U.S. 528, 115 S.Ct. 2322, 132 L.Ed.2d 462 (1995) foreign arbitration clause); *Carnival Cruise Lines, Inc. v. Shute* 499 U.S. at 595, 111 S.Ct. at 1528; *M/S BREMEN v. Zapata Off Shore Co.,* 407 U.S. 1, 15, 92 S.Ct. 1907, 1916, 32 L.Ed.2d 513 (1972)). The Supreme Court in *BREMEN* explained the policy underlying the validity of these clauses:

> The expansion of American business and industry will hardly be encouraged if, notwithstanding solemn contracts, we insist on a parochial concept that all disputes must be resolved under our laws and in our courts. . . . We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts.

407 U.S. at 9, 92 S.Ct. at 1913. Therefore, courts must enforce these clauses in the interests of international comity and out of deference to the integrity and proficiency of foreign courts. *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614, 629, 105 S.Ct. 3346, 3355, 87 L.Ed.2d 444 (1985). In order to overcome the presumption that the forum selection clause is enforceable, the party challenging the clause must make a strong showing that the clause is unreasonable. *See Marinechance,* 143 F.2d at 220 (*citing BREMEN,* 407 U.S. at 15, 92 S.Ct. at 1916). In *Carnival Cruise Lines,* the Supreme Court stated that these types of clauses are "subject to judicial scrutiny for fundamental fairness." *See Carnival Cruise Lines,* 499 U.S. at 595, 111 S.Ct. 1528. Plaintiff has pointed to nothing that establishes the unreasonableness of the arbitration provision. Accordingly, the Court finds the provision valid and applies it to plaintiff's claims.

III. CONCLUSION

Because plaintiff and defendant entered into a valid contract containing an enforceable arbitration agreement, the defendants' motion to compel arbitration is GRANTED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-30694

ERNESTO FRANCISCO

Plaintiff-Appellant

v.

STOLT ACHIEVEMENT, MT, a vessel bearing official number 1973; STOLT ACHIEVEMENT, INC; STOLT-NIELSEN TRANSPORTATION GROUP, LTD; STOLT PARCEL TANKERS INC, the operator and/or owner of the M/T Stolt Achievement

Defendant-Appellees

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans

ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion 6/4/02, 5 Cir., ___, ___ F.3d ___)

(Filed Jul. 3, 2002)

Before **KING**, Chief Judge, **REAVLEY** and **WIENER**, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Reavley, Chief Judge
United States Circuit Judge

UNITED STATES CODE ANNOTATED
TITLE 9, ARBITRATION
CHAPTER 1 – GENERAL PROVISIONS

§ 1. "Maritime transactions" and "commerce" defined: exception to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

UNITED STATES CODE ANNOTATED
TITLE 9, ARBITRATION
CHAPTER 2 – CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

§ 201. Enforcement of Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

* * *

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of

awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect to which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is

relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interest party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 [27 LNTS 157; 92 LNTS 301] shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice [T.S. 993; 59 Stat. 1055], or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of

the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to the extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with article VIII;

(b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally

authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Done at New York June 10, 1958; entered into force for the United States December 29, 1970, subject to declarations.

Implementing Legislation Pub.L. 91-368, 84 Stat. 692, *9 USC 201-208*

States which are parties:

* * *

United States *[FN29]*

* * *

[FN29] "The United States of America will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of only those awards made in the territory of another Contracting State."

"The United States of America will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the United States."

The Convention applies to all of the territories for the international relations of which the United States of America is responsible.

UNITED STATES CODE ANNOTATED
TITLE 9, ARBITRATION
CHAPTER 2 – CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

§ 208. Chapter 1; residual application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter of the Convention as ratified by the United States.

UNITED STATES CODE ANNOTATED TITLE 28, JUDICIARY AND JUDICIAL PROCEDURE PART IV – JURISDICTION AND VENUE CHAPTER 85 – DISTRICT COURTS; JURISDICTION

§ 1333. Admiralty, maritime and prize cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

UNITED STATES CODE ANNOTATED
TITLE 28 JUDICIARY AND JUDICIAL PROCEDURE PART IV – JURISDICTION AND VENUE
CHAPTER 89 – DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

§ 1445. Nonremovable actions

(a) A civil action in any State court against a railroad or its receivers or trustees, arising under sections 1-4 and 5-10 of the Act of April 22, 1908 (*45 U.S.C. 51-54, 55-60*), may not be removed to any district court of the United States.

(b) A civil action in any State court against a carrier or its receivers or trustees to recover damages for delay, loss, or injury of shipments, arising under section 11706 or 14706 of title 49, may not be removed to any district court of the United States unless the matter in controversy exceeds $10,000, exclusive of interest and costs.

(c) A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.

(d) A civil action in any State court arising under section 40302 of the Violence Against Women Act of 1994 may not be removed to any district court of the United States.

UNITED STATES CODE ANNOTATED
TITLE 45, RAILROADS
CHAPTER 2 – LIABILITY FOR INJURIES TO EMPLOYEES

§ 51. Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; employee defined.

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employees shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and

shall be considered as entitled to the benefits of this chapter.

UNITED STATES CODE ANNOTATED
TITLE 45. RAILROADS
CHAPTER 2 – LIABILITY FOR INJURIES TO EMPLOYEES

§ 56. Actions; limitation; concurrent jurisdiction of courts

No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States.

UNITED STATES CODE ANNOTATED
TITLE 45. RAILROADS
CHAPTER 2 – LIABILITY FOR INJURIES TO EMPLOYEES

§ 59. Survival of right of action of person injured

Any right of action given by this chapter to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury.

UNITED STATES CODE ANNOTATED
TITLE 45. RAILROADS
CHAPTER 8 – RAILWAY LABOR
SUBCHAPTER I – GENERAL PROVISIONS

§ 151. Definitions; short title

When used in this chapter and for the purposes of this chapter –

First. The term "carrier" includes any railroad subject to the jurisdiction of the Surface Transportation Board, any express company that would have been subject to subtitle IV of Title 49, as of December 31, 1995,, [FN1] and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal

to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this chapter.

Third. The term "Mediation Board" means the National Mediation Board created by this chapter.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Board pursuant to the authority which is conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Surface Transportation Board shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers

of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Board.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the United States District Court for the District of Columbia; and the term "court of appeals" includes the United States Court of Appeals for the District of Columbia.

This chapter may be cited as the "Railway Labor Act."

UNITED STATES CODE ANNOTATED
TITLE 46. SHIPPING
CHAPTER 18 – MERCHANT SEAMEN
SUBCHAPTER I – PROTECTION AND RELIEF

§ 688. Recovery for injury to or death of seaman

(a) Application of railway employee statutes; jurisdiction

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(b) Limitation for certain aliens; applicability in lieu of other remedy

(1) No action may be maintained under subsection (a) of this section or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action if the incident occurred –

(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of off-shore mineral or energy resources – including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and

(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term "continental shelf" has the meaning stated in article I of the 1958 Convention on the Continental Shelf.

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person –

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

UNITED STATES CODE ANNOTATED
TITLE 46. SHIPPING
SUBTITLE II – VESSELS AND SEAMEN
PART G – MERCHANT SEAMEN PROTECTION AND RELIEF CHAPTER 103 – FOREIGN AND INTERCOASTAL VOYAGES

§10313. Wages

* * *

(i) This section applies to a seaman on a foreign vessel when in a harbor of the United States. The courts are available to the seaman for the enforcement of this section.